

48A C.J.S. Judges § 214

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VII. Compensation and Fees

D. Pensions and Retirement Benefits

§ 214. Disability and surviving spouse's pensions

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West's Key Number Digest

West's Key Number Digest, [Judges](#)  22(11)

Under statutes so providing, a judge may be entitled to disability retirement benefits, or a surviving spouse of a judge may be entitled to a pension.

Under statutes so providing, a judge may be entitled to disability retirement benefits¹ provided the disability is one comprehended by the statute.² An early judicial disability pension may be awarded only where clear and convincing evidence establishes that a judge is truly in extremis and that, even with medical treatment, the judge will not be likely to recover his or her health and capacity to perform the duties of the office.³ A judge does not forfeit his or her disability retirement benefits on conviction of an offense and suspension and removal from the office.⁴

Various statutes provide a pension for the surviving spouse of a judge who has died in service or after retirement,⁵ but if a judge is not eligible for a pension at the time of the judge's death, the surviving spouse will not be entitled to the benefits.⁶ The benefits of a surviving spouse may be

taken in a lump sum⁷ except when the surviving children allowance is otherwise payable.⁸ The surviving spouse is not entitled to interest payments on his or her benefits.⁹

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Footnotes

- 1 Cal.—*Willens v. Commission On Judicial Qualifications*, 10 Cal. 3d 451, 110 Cal. Rptr. 713, 516 P.2d 1 (1973).

Okla.—*Lavender v. Woodliff*, 1979 OK JUD 1, 605 P.2d 1338 (Okla. Jud. Ct. 1979).

Consent of judge
No language in the judges' retirement law requires consent of the judge to his or her retirement to be executed before or after the operative fact which brings an anticipated disability into being, nor is there anything in the language or in the authorities to preclude a conditional consent.

Cal.—*Gorman v. Cranston*, 64 Cal. 2d 441, 50 Cal. Rptr. 533, 413 P.2d 133 (1966).

Extension of benefits
A judge's retirement benefits, payable under a statute providing that from and after the disability retirement date a disabled judge shall be entitled to continuation of his full salary payable by the judge's employer, as if his office were not vacated by retirement, for a period of two full years, and thereafter a disability retirement annuity, may extend beyond the mandatory retirement date in situations where the judge would be entitled to obtain an extension of his term had he not become disabled.

Minn.—*Dosland v. State*, 288 N.W.2d 691 (Minn. 1979).

Transfer to other retirement system
If a circuit judge is involuntarily retired for disability under a section of the state constitution, the judge is entitled to the retirement benefits of the judicial retirement system even if the judge has elected to transfer from the judicial retirement system to the elected state officer class of the state retirement system.

Fla.—*Falk v. Kennedy*, 332 So. 2d 328 (Fla. 1976).

2 Fla.—*In re Farmer*, 130 So. 2d 601 (Fla. 1961).

N.J.—*McGee v. Board of Trustees of Public Emp. Retirement System*, 45 N.J. 576, 214 A.2d 21 (1965).

3 Nev.—*Goldman v. Nevada Com'n on Judicial Discipline*, 108 Nev. 251, 830 P.2d 107 (1992) (disapproved of on other grounds by, *In re Fine*, 116 Nev. 1001, 13 P.3d 400 (2000)).

4 Cal.—*Willens v. Commission On Judicial Qualifications*, 10 Cal. 3d 451, 110 Cal. Rptr. 713, 516 P.2d 1 (1973).

5 Ariz.—*Thurston v. Judges' Retirement Plan*, 179 Ariz. 49, 876 P.2d 545 (1994).

Accident in course of employment
The record in a hearing on the claim of a widow to the state retirement board for widow's benefits supported the trial court's conclusion that the judge, whose testimony showed he suffered a deterioration of health brought on by the stresses of highly sensitive cases handled by him during the last six weeks of his life, died as a result of an accident arising out of or in the course of his employment.

Utah—*Elton v. Utah State Retirement Bd.*, 28 Utah 2d 368, 503 P.2d 137 (1972).

Surviving spouse, not ex-spouse

The judges' retirement law is designed for the support of surviving spouses of judges who die in service or after retirement, not for the support of ex-spouses of judges; therefore, when the marriage of an unretired judge terminates, the spouse loses a contingent prospect, not an enforceable right.

Cal.—*In re Marriage of Andreen*, 76 Cal. App. 3d 667, 143 Cal. Rptr. 94 (3d Dist. 1978).

6 Colo.—*Kettering v. Public Emp. Retirement Bd.*, 151 Colo. 474, 378 P.2d 837 (1963).

7 Cal.—*Forde v. Cory*, 66 Cal. App. 3d 434, 135 Cal. Rptr. 903 (3d Dist. 1977).

8 Cal.—*Forde v. Cory*, 66 Cal. App. 3d 434, 135 Cal. Rptr. 903 (3d Dist. 1977).

9 Cal.—*McWilliams v. Cranston*, 211 Cal. App. 2d 852, 27 Cal. Rptr. 303 (3d Dist. 1962).

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